

M4LKKOLP

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

20 CR 412 (AT)
Remote Proceeding

5 BRIAN KOLFAGE, ANDREW
6 BADOLATO,

7 Defendants.

8 -----x
9 UNITED STATES OF AMERICA,

10 v.

22 CR 201 (AT)

11 BRIAN KOLFAGE,

12 Defendant.

13 -----x
14 New York, N.Y.
15 April 21, 2022
16 3:30 p.m.

17 Before:

18 HON. ANALISA TORRES,

19 District Judge
20
21
22
23
24
25

M4LKKOLP

APPEARANCES

DAMIAN WILLIAMS

Acting United States Attorney for the
Southern District of New York

ALISON G. MOE

NICOLAS ROOS

ROBERT BENJAMIN SOBELMAN

Assistant United States Attorneys

CESAR de CASTRO

DAVID DESTEFANO

Attorneys for Defendant Kolfage

MICHAEL PAUL HEFFERNAN

Attorney for Defendant Badolato

M4LKKOLP

(The Court and all parties appearing remotely)

THE COURT: Good afternoon.

We are here in the matter of the United States versus Brian Kolfage and Andrew Badolato, Docket 20 CR 412, and United States versus Kolfage, Docket 22 CR 201.

I'd like the court reporter to confirm that he or she is on the line.

(Pause)

THE COURT: Counsel, please make your appearances.

MR. ROOS: Good afternoon, your Honor. Nick Roos, for the United States. I'm joined off camera on the audio line by my colleagues, Alison Moe and Robert Sobelman, of the United States Attorney's Office.

MR. DE CASTRO: Good afternoon, your Honor. Cesar De Castro and David DeStefano, for Brian Kolfage, who you can also see is also present.

MR. DESTEFANO: Good afternoon.

MR. HEFFERNAN: Good afternoon, your Honor. Michael Heffernan, for Andrew Badolato, who is also present.

THE COURT: I actually am not able to see everyone on the screen. Ms. Marder-Spiro, are you able to see Mr. Kolfage and Mr. Badolato?

THE LAW CLERK: Yes, Judge, I can.

Are there too many boxes? Is that the issue you're having?

M4LKKOLP

1 THE COURT: I think that may be the issue, yes. But
2 let me see.

3 MR. ROOS: Your Honor, I'm no expert at this, but I've
4 found some success if you right click on the person's name and
5 click pin, pin them, then you could, for instance, pin
6 Mr. Kolfage, Mr. Badolato, and their counsel.

7 THE LAW CLERK: Also, are both Mr. Kolfage's attorneys
8 going to be speaking today?

9 MR. DE CASTRO: Just Mr. De Castro.

10 THE LAW CLERK: Okay. Mr. DeStefano, do you mind
11 going off video?

12 MR. DESTEFANO: Sure. No problem.

13 THE LAW CLERK: Thank you.

14 THE COURT: I'm sorry, I'm having some difficulty.

15 THE LAW CLERK: Judge, if you'd like to mute yourself,
16 I can give you a call and give you some options.

17 (Pause)

18 THE COURT: Sorry for the delay.

19 The videoconference is open to the public, just as a
20 courtroom would be, but as a reminder to those listening in,
21 you're not permitted to record or rebroadcast the proceeding.

22 I understand that both defendants are prepared to
23 consent to this hearing proceeding remotely.

24 Mr. Kolfage, you understand that you have the right to
25 be personally physically present in the courtroom. After

M4LKKOLP

1 discussing that with your lawyer, did you decide that you
2 wanted to consent to having this matter proceed remotely by
3 videoconference?

4 DEFENDANT KOLFAGE: Yes, your Honor.

5 THE COURT: And I have the same question for
6 Mr. Badolato.

7 I can't hear you, sir.

8 I still cannot hear Mr. Badolato. Can anybody hear
9 him?

10 (Pause)

11 THE COURT: Are you able to hear me, Mr. Badolato?

12 Okay. All right. He's shaking his head yes. We just
13 have to wait until he gets his audio going.

14 (Pause)

15 DEFENDANT BADOLATO: Hello.

16 THE COURT: I can hear you, but there's now an echo.

17 DEFENDANT BADOLATO: Yeah, there's an echo. Let me
18 turn off this other --

19 (Pause)

20 DEFENDANT BADOLATO: Is that better?

21 THE COURT: Yes.

22 DEFENDANT BADOLATO: Yes, your Honor, I was advised
23 and attending videoconference, yes, ma'am -- yes, your Honor.

24 THE COURT: And you understand that you have the right
25 to be personally present, correct?

M4LKKOLP

1 DEFENDANT BADOLATO: Yes, ma'am. Yes, your Honor.

2 THE COURT: I'm going to pose some questions to
3 Mr. Kolfage and Mr. Badolato. I will call on each of you
4 individually after I ask the question.

5 I have been informed that Mr. Kolfage and Mr. Badolato
6 want to change their plea and enter a plea of guilty.

7 Is that correct?

8 Mr. Kolfage?

9 DEFENDANT KOLFAGE: Yes, ma'am.

10 THE COURT: Mr. Badolato?

11 DEFENDANT BADOLATO: Yes, your Honor.

12 THE COURT: Before deciding whether to accept your
13 guilty plea, I'm going to ask you some questions. It is very
14 important that you answer my questions honestly and completely.
15 The purpose of these proceedings is to make sure that you
16 understand your rights, to decide whether you are pleading
17 guilty of your own free will, and to make sure that you're
18 pleading guilty because you are guilty and not for another
19 reason.

20 Do you understand?

21 Mr. Kolfage?

22 DEFENDANT KOLFAGE: Yes, your Honor.

23 THE COURT: Mr. Badolato?

24 DEFENDANT BADOLATO: Yes, your Honor.

25 THE COURT: If you don't understand any of my

M4LKKOLP

1 questions, or if you want at any time to consult with your
2 lawyer, please say so, because it is important that you
3 understand every question before you answer.

4 Ms. Marder-Spiro, please swear the defendants.

5 (Defendants sworn)

6 THE COURT: You understand that you're now under oath,
7 and that if you answer any of my questions falsely, you may be
8 prosecuted for perjury based on any false answers?

9 Mr. Kolfage?

10 DEFENDANT KOLFAGE: Yes, your Honor, I understand.

11 THE COURT: Mr. Badolato?

12 DEFENDANT BADOLATO: Yes, your Honor, I understand.

13 THE COURT: Mr. Kolfage, how far did you go in school?

14 DEFENDANT KOLFAGE: Four-year degree, Bachelor's in
15 architecture.

16 THE COURT: And where was that?

17 DEFENDANT KOLFAGE: The University of Arizona.

18 THE COURT: Have you ever been treated or hospitalized
19 for mental illness?

20 DEFENDANT KOLFAGE: No, your Honor.

21 THE COURT: Have you ever been addicted to drugs or
22 alcohol?

23 DEFENDANT KOLFAGE: No, your Honor.

24 THE COURT: Are you now, or have you recently been,
25 under the care of any kind of doctor or a psychiatrist?

M4LKKOLP

1 DEFENDANT KOLFAGE: Yes, your Honor.

2 THE COURT: What is the nature of that care?

3 DEFENDANT KOLFAGE: It's related to my combat
4 disability.

5 THE COURT: Are you having to take medication for
6 that?

7 DEFENDANT KOLFAGE: Yes, your Honor.

8 THE COURT: Does that medication in any way affect
9 your ability to understand these proceedings?

10 DEFENDANT KOLFAGE: No, it does not, your Honor.

11 THE COURT: Have you taken any drugs, medicine, or
12 pills or drunk any alcoholic beverages in the last 24 hours?

13 DEFENDANT KOLFAGE: Yes, your Honor.

14 THE COURT: And what was that?

15 DEFENDANT KOLFAGE: It was medication for -- you need
16 the name of the medication or you just want to know what it's
17 for?

18 THE COURT: I want to know the nature of the
19 medication.

20 DEFENDANT KOLFAGE: It's a narcotic for nerve pain
21 related to my amputations of my legs.

22 THE COURT: Okay.

23 Is there any medication that you're supposed to be
24 taking that you did not take?

25 DEFENDANT KOLFAGE: No, your Honor.

M4LKKOLP

1 THE COURT: And is your mind clear today?

2 DEFENDANT KOLFAGE: Yes, it is.

3 THE COURT: And you understand what is happening in
4 this proceeding, correct?

5 DEFENDANT KOLFAGE: Correct, your Honor.

6 THE COURT: Mr. Badolato, how far did you go in
7 school?

8 DEFENDANT BADOLATO: I have a four-year degree from
9 St. Thomas of Villanova University in Miami, Florida, in
10 business management.

11 THE COURT: Have you ever been treated or hospitalized
12 for mental illness?

13 DEFENDANT BADOLATO: No.

14 THE COURT: Have you ever been addicted to drugs or
15 alcohol?

16 DEFENDANT BADOLATO: No, your Honor.

17 THE COURT: Are you now, or have you recently been,
18 under the care of a doctor or a psychiatrist?

19 DEFENDANT BADOLATO: Doctor, yes.

20 THE COURT: For what?

21 DEFENDANT BADOLATO: I have -- I take heart
22 medications, blood pressure. And recently I had a hip
23 replacement that I'm getting out of care with them, but still
24 have a sporadic meeting here and there with the hip doctor.
25 And a heart doctor that I take medications for heart, none of

M4LKKOLP

1 them are psychiatric in nature, and I take them regularly.

2 THE COURT: Have you taken any drugs, medicine, or
3 pills or drunk any alcoholic beverages in the last 24 hours?

4 DEFENDANT BADOLATO: I think, your Honor, I had a
5 drink last night at dinner, approximately 6:00, 7:00 p.m.

6 THE COURT: What is the nature of the medication that
7 you take?

8 DEFENDANT BADOLATO: Blood pressure, beta blocker,
9 very generic things for heart conditions, of which I have a
10 couple of heart stents that I had a heart attack maybe six,
11 seven years ago.

12 THE COURT: Sorry to hear that.

13 Have you taken those medications in the last 24 hours?

14 DEFENDANT BADOLATO: Yes, ma'am.

15 THE COURT: And do they affect your ability to follow
16 these proceedings?

17 DEFENDANT BADOLATO: No, ma'am.

18 THE COURT: And your mind is clear today?

19 DEFENDANT BADOLATO: Yes, ma'am.

20 THE COURT: And you understand what's happening in
21 this proceeding?

22 DEFENDANT BADOLATO: Yes, your Honor.

23 THE COURT: I'm now going to ask a few questions to
24 the attorneys for Mr. Kolfage and Mr. Badolato.

25 I'll start with Mr. De Castro and go, then, to

M4LKKOLP

1 Mr. Heffernan.

2 Have you discussed this matter with your client,
3 Mr. De Castro?

4 MR. DE CASTRO: Yes, I have, your Honor.

5 THE COURT: Mr. Heffernan?

6 MR. HEFFERNAN: Yes, ma'am.

7 THE COURT: Does your client understand the rights
8 that he would be waiving by pleading guilty?

9 Mr. De Castro?

10 MR. DE CASTRO: He does, your Honor.

11 THE COURT: Mr. Heffernan?

12 MR. HEFFERNAN: Yes, he does, your Honor.

13 THE COURT: Is your client capable of understanding
14 the nature of the proceedings, Mr. De Castro?

15 MR. DE CASTRO: Yes, he is.

16 THE COURT: Mr. Heffernan?

17 MR. HEFFERNAN: Yes, your Honor.

18 THE COURT: Do you have any doubt as to your client's
19 competence to plead at this time?

20 Mr. De Castro?

21 MR. DE CASTRO: No doubts.

22 THE COURT: Mr. Heffernan?

23 MR. HEFFERNAN: No doubts, your Honor.

24 THE COURT: Does the government have any doubt as to
25 the competence of Mr. Kolfage to plead at this time?

M4LKKOLP

1 MR. ROOS: No, your Honor.

2 THE COURT: Does the government have any doubt as to
3 the competence of Mr. Badolato to plead at this time?

4 MR. ROOS: No, your Honor.

5 THE COURT: On the basis of Mr. Kolfage's and
6 Mr. Badolato's responses to my questions, my observations of
7 their demeanor right now, and the representations of counsel, I
8 find that the defendants are fully competent to enter an
9 informed plea of guilty at this time.

10 Mr. Kolfage, have you received a copy of the
11 indictment in Docket 20 CR 412?

12 DEFENDANT KOLFAGE: Yes, your Honor.

13 THE COURT: And have you received a copy of the
14 superseding indictment in Docket 22 CR 201?

15 DEFENDANT KOLFAGE: Yes, your Honor.

16 THE COURT: Have you read both of those documents?

17 DEFENDANT KOLFAGE: I have read both of them, your
18 Honor.

19 THE COURT: Do you want me to read them to you now in
20 open court, or do you waive their public reading?

21 DEFENDANT KOLFAGE: I waive their public reading, your
22 Honor.

23 THE COURT: You understand that you're charged, in
24 Docket 20 CR 412, with conspiracy to commit wire fraud, in
25 violation of 18, United States Code, Section 1349, and

M4LKKOLP

1 conspiracy to commit money laundering, in violation of 18,
2 United States Code, Section 1956(h)?

3 DEFENDANT KOLFAGE: I understand, your Honor.

4 THE COURT: And do you understand that you're charged,
5 in Docket 22 CR 201, with two counts of making false statements
6 on a tax return, in violation of 26, United States Code,
7 Section 72061, and 18, United States Code, Section 2?

8 DEFENDANT KOLFAGE: Yes, your Honor.

9 THE COURT: And that you're also charged with wire
10 fraud in connection with filing a false tax return, in
11 violation of 18, United States Code, Sections 1343 and 2?

12 DEFENDANT KOLFAGE: Yes, your Honor.

13 THE COURT: Mr. Badolato, have you received a copy of
14 the indictment in Docket 20 CR 412?

15 DEFENDANT BADOLATO: Yes, your Honor.

16 THE COURT: And you've read it?

17 DEFENDANT BADOLATO: Yes, your Honor.

18 THE COURT: Do you want me to read it to you now in
19 open court here, or do you want to waive its public reading?

20 DEFENDANT BADOLATO: I would like to waive its public
21 reading, your Honor.

22 THE COURT: Do you understand that you're charged with
23 conspiracy to commit wire fraud, in violation of 18, United
24 States Code, Section 1349?

25 DEFENDANT BADOLATO: Yes, your Honor.

M4LKKOLP

1 THE COURT: And conspiracy to commit money laundering,
2 in violation of 18, United States Code, Section 1956(h)?

3 DEFENDANT BADOLATO: Yes, your Honor.

4 THE COURT: Have you had enough time and opportunity
5 to discuss your case with your attorney, Mr. Kolfage?

6 DEFENDANT KOLFAGE: Yes, your Honor.

7 THE COURT: Mr. Badolato?

8 DEFENDANT BADOLATO: Yes, your Honor.

9 THE COURT: Have you discussed with your attorney all
10 of the facts about your involvement in these matters?

11 Mr. Kolfage?

12 DEFENDANT KOLFAGE: Yes, I have, your Honor.

13 THE COURT: Mr. Badolato?

14 DEFENDANT BADOLATO: Yes, your Honor.

15 THE COURT: Has your attorney told you the
16 consequences of pleading guilty?

17 Mr. Kolfage?

18 DEFENDANT KOLFAGE: Yes, your Honor.

19 THE COURT: Mr. Badolato?

20 DEFENDANT BADOLATO: Yes, your Honor.

21 THE COURT: And you're satisfied with your attorney's
22 representation of you?

23 Mr. Kolfage?

24 DEFENDANT KOLFAGE: Yes, your Honor.

25 THE COURT: Mr. Badolato?

M4LKKOLP

1 DEFENDANT BADOLATO: Yes, your Honor.

2 THE COURT: I'm going to explain certain
3 constitutional rights that you have. These are rights that you
4 will be giving up if you enter a guilty plea. Please listen
5 carefully to what I am about to say, and if you don't
6 understand something, stop me, and your attorney or I will
7 explain the matter more fully.

8 Under the Constitution and laws of the United States,
9 you have a right to plead not guilty to the charges. Do you
10 understand?

11 Mr. Kolfage?

12 DEFENDANT KOLFAGE: Yes, I do, your Honor.

13 THE COURT: Mr. Badolato?

14 DEFENDANT BADOLATO: Yes, your Honor.

15 THE COURT: If you did plead not guilty, you would be
16 entitled, under the Constitution, to a speedy and public trial
17 by a jury. Do you understand?

18 Mr. Kolfage?

19 DEFENDANT KOLFAGE: Yes, I do, your Honor.

20 THE COURT: Mr. Badolato?

21 DEFENDANT BADOLATO: Yes, I understand, your Honor.

22 THE COURT: At the trial, you would be presumed to be
23 innocent, and the government would be required to prove you
24 guilty beyond a reasonable doubt before you could be found
25 guilty. That means that you would not have to prove that you

M4LKKOLP

1 were innocent, and you could not be convicted unless a jury of
2 12 people agreed unanimously that you are guilty beyond a
3 reasonable doubt.

4 Do you understand?

5 Mr. Kolfage?

6 DEFENDANT KOLFAGE: Yes, your Honor.

7 THE COURT: Mr. Badolato?

8 DEFENDANT BADOLATO: Yes, your Honor.

9 THE COURT: At the trial, and at every stage of your
10 case, you would be entitled to be represented by a lawyer, and
11 if you could not afford one, one would be appointed at public
12 expense, free of charge.

13 Do you understand?

14 Mr. Kolfage?

15 DEFENDANT KOLFAGE: Yes, your Honor.

16 THE COURT: Mr. Badolato?

17 DEFENDANT BADOLATO: Yes, your Honor.

18 THE COURT: During a trial, the witnesses for the
19 prosecution would have to come to court and testify in your
20 presence, where you could see and hear them and your lawyer
21 could cross-examine them. And, if you wanted, your lawyer
22 could offer evidence on your behalf. You would be able to use
23 the Court's power to compel witnesses to come to court to
24 testify in your defense, even if they did not want to come.

25 Do you understand?

M4LKKOLP

Mr. Kolfage?

DEFENDANT KOLFAGE: Yes, your Honor.

THE COURT: Mr. Badolato?

DEFENDANT BADOLATO: Yes, your Honor.

THE COURT: At trial, you would have the right to testify if you wanted to, but you would also have the right not to testify, and if you chose not to testify, that could not be used against you in any way. No inference or suggestion of guilt could be made from the fact that you did not testify.

Do you understand?

Mr. Kolfage?

DEFENDANT KOLFAGE: Yes, your Honor.

THE COURT: Mr. Badolato?

DEFENDANT BADOLATO: Yes, your Honor.

THE COURT: If you were convicted at trial, you would have the right to appeal that verdict to a higher court. Do you understand?

Mr. Kolfage?

DEFENDANT KOLFAGE: Yes, your Honor.

THE COURT: Mr. Badolato?

DEFENDANT BADOLATO: Yes, your Honor.

THE COURT: As I said, you have the right to plead not guilty. Even right now, even as you sit here for the purpose of entering a guilty plea, you have the right to change your mind, persist in your not-guilty plea, and go to trial. But if

M4LKKOLP

1 you did plead guilty, and I accept your plea, you will be
2 giving up your right to trial and all the other rights that go
3 with it that I have just described. If you plead guilty, there
4 will be no trial. All that will remain to be done is to impose
5 sentence. I will enter a judgment of guilty and sentence you
6 on the basis of your guilty plea after considering whatever
7 submissions I get from you, your lawyer, and the government, as
8 well as a presentence report prepared by the probation
9 department.

10 Do you understand?

11 Mr. Kolfage?

12 DEFENDANT KOLFAGE: Yes, your Honor, I understand.

13 THE COURT: Mr. Badolato?

14 DEFENDANT BADOLATO: Yes, I understand, your Honor.

15 THE COURT: If you plead guilty, do you understand
16 that you will also have to give up your right not to
17 incriminate yourself because I will ask you questions about
18 what you did in order to satisfy myself that you're guilty as
19 charged.

20 Do you understand?

21 Mr. Kolfage?

22 DEFENDANT KOLFAGE: Yes, your Honor.

23 THE COURT: Mr. Badolato?

24 DEFENDANT BADOLATO: Yes, your Honor.

25 THE COURT: Do you understand each and every one of

M4LKKOLP

1 these rights?

2 Mr. Kolfage?

3 DEFENDANT KOLFAGE: Yes, your Honor.

4 THE COURT: Mr. Badolato?

5 DEFENDANT BADOLATO: Yes, your Honor.

6 THE COURT: Are you willing to give up your right to a
7 trial and the other rights that I have just discussed with you?

8 Mr. Kolfage?

9 DEFENDANT KOLFAGE: Yes, your Honor.

10 THE COURT: Mr. Badolato?

11 DEFENDANT BADOLATO: Yes, your Honor.

12 THE COURT: Mr. Kolfage and Mr. Badolato, you said
13 before that you have read the indictments containing the
14 charges against you. I understand that you both intend to
15 plead guilty to Count One of the indictment in Docket 20 CR
16 412, wire fraud conspiracy.

17 Is that right?

18 Mr. Kolfage?

19 DEFENDANT KOLFAGE: Yes, your Honor.

20 THE COURT: Mr. Badolato?

21 DEFENDANT BADOLATO: Yes, your Honor.

22 THE COURT: I also understand that Mr. Kolfage intends
23 to plead guilty to Counts One, Two, and Three of the
24 superseding indictment in an additional case under Docket 22 CR
25 201, which includes making false statements on a tax return and

M4LKKOLP

1 wire fraud.

2 Is that correct, Mr. Kolfage?

3 DEFENDANT KOLFAGE: Yes, your Honor.

4 THE COURT: I will start with Docket 20 CR 412.

5 AUSA Roos, would you please state the elements of the
6 offense in question.

7 MR. ROOS: Yes, your Honor.

8 For Count One of Indictment 20 CR 412, which charges
9 both defendants with conspiracy to commit wire fraud, in
10 violation of Title 18, United States Code, Section 1349, these
11 are the following elements:

12 One, that two or more persons entered into an unlawful
13 agreement to violate specified laws of the United States
14 prohibiting wire fraud;

15 And, second, that the defendant in question knowingly
16 and willfully entered into the agreement.

17 The crime of wire fraud, in turn, has three elements:

18 First, the existence of a scheme or artifice to
19 defraud or to obtain money or property by means of materially
20 false and fraudulent pretenses, representations, or promises;

21 Second, the defendant participated in the scheme or
22 artifice to defraud with knowledge of its fraudulent
23 (unintelligible) the intent to defraud;

24 And, finally, in the execution of the scheme, the
25 defendant used or caused to be used interstate or foreign

M4LKKOLP

1 wires.

2 And, your Honor, now I'll move on --

3 THE COURT: If you'll just hold off for a moment.

4 (Pause)

5 MR. ROOS: Your Honor, if I may?

6 THE COURT: Go ahead.

7 MR. ROOS: Second, the defendant participated in the
8 scheme or artifice to defraud with knowledge of its fraudulent
9 nature and with the specific intent to defraud;

10 And third, finally, in the execution of the scheme,
11 the defendant used or caused to be used interstate or foreign
12 wires.

13 THE COURT: So, with respect to Docket 20 CR 412, do
14 you understand that if you were to go to trial, the defendant
15 would have to prove all of those elements beyond a reasonable
16 doubt?

17 Mr. Kolfage?

18 DEFENDANT KOLFAGE: Yes, your Honor.

19 THE COURT: Mr. Badolato?

20 DEFENDANT BADOLATO: Yes, your Honor.

21 THE COURT: I will now turn to Docket 22 CR 201.

22 AUSA Roos, would you please state the elements of the
23 offense in question?

24 MR. ROOS: Yes, your Honor.

25 So Count One and Three of the Superseding Indictment

M4LKKOLP

22 CR 2201, which was transferred from the Northern District of Florida, charges the Defendant Brian Kolfage with filing a false tax return, in violation of Title 26, United States Code, Section 7206, Subsection (1).

The elements of filing a false tax return are:

One, that the defendant made or caused to be made and subscribed a return, statement, or other document which was false as to a material matter for the year 2019;

Second, the return, statement, or other document contained a written declaration that it was made under penalties of perjury;

Third, the defendant knew the return, statement, or other document was false as to a material matter;

And, fourth, the defendant falsely subscribed to the return, statement, or other document willfully and with the specific intent to violate the law.

The defendant is also charged in Count Two of Superseding Indictment 22 CR 201 with wire fraud in connection with his filing of a false and fraudulent tax return, in violation of Title 18, United States Code, Sections 1343 and 2.

The elements of wire fraud are the same as those that I stated previously, but, if I may:

First, the existence of a scheme or artifice to defraud or to obtain money or property by means of materially false and fraudulent pretenses, representations, or promises;

M4LKKOLP

1 Second, the defendant participated in a scheme or
2 artifice to defraud with knowledge of its fraudulent nature and
3 with specific intent to defraud;

4 And, finally, third, in the execution of the scheme,
5 the defendant used or caused to be used interstate or foreign
6 wires.

7 For all these charges, the government would be
8 required to prove venue by a preponderance of the evidence.
9 For the first indictment that I mentioned, that would be proved
10 by preponderance of venue in the Southern District of New York,
11 and for what is now Superseding Indictment 22 CR 201, which
12 came from the Northern District of Florida, that would be
13 establishing venue in that district by a preponderance of the
14 evidence.

15 THE COURT: Mr. Kolfage, with respect to Docket 22 CR
16 201, you just heard Mr. Roos state the elements of those
17 crimes. Do you recall that?

18 DEFENDANT KOLFAGE: Yes, your Honor.

19 THE COURT: And do you understand that if you were to
20 go to trial, the government would have to prove those elements
21 beyond a reasonable doubt except for venue, which would have to
22 be proved by a preponderance of the evidence?

23 DEFENDANT KOLFAGE: Yes, your Honor.

24 THE COURT: I'm going to return, for a moment, to
25 Docket 20 CR 412, which applies to both Mr. Kolfage and

M4LKKOLP

1 Mr. Badolato.

2 Do you both understand that if you were to go to
3 trial, the government would have to prove the elements beyond a
4 reasonable doubt except for venue, which has to be proven by a
5 preponderance of the evidence?

6 Mr. Kolfage?

7 DEFENDANT KOLFAGE: Yes, your Honor.

8 THE COURT: And Mr. Badolato?

9 DEFENDANT BADOLATO: Yes, I understand, your Honor.

10 THE COURT: Now I'm going to tell you about the
11 maximum penalties. The maximum penalty means the most that
12 could possibly be imposed. It doesn't mean that's what you
13 necessarily will receive, but you have to understand that by
14 pleading guilty, you are exposing yourself to the possibility
15 of receiving any combination of punishments up to the maximums
16 that I'm about to describe.

17 Do you understand?

18 Mr. Kolfage?

19 DEFENDANT KOLFAGE: Yes, your Honor.

20 THE COURT: Mr. Badolato?

21 DEFENDANT BADOLATO: Yes, your Honor.

22 THE COURT: I will start with Docket 20 CR 412.

23 First, with regard to your liberty, the maximum term
24 of imprisonment for Count One of the indictment in Docket 20 CR
25 412, which pertains to both Mr. Kolfage and Mr. Badolato, is 20

M4LKKOLP

1 years, which could be followed by up to three years of
2 supervised release. Supervised release means that if you're
3 sentenced to prison, after you're released, you'll be subject
4 to supervision by the probation department. There will be
5 rules of supervised release that you will have to follow, and
6 if you violate those rules, you can be returned to prison
7 without a jury trial to serve additional time, even beyond your
8 original sentence.

9 Do you understand, Mr. Kolfage?

10 DEFENDANT KOLFAGE: Yes, your Honor.

11 THE COURT: Mr. Badolato?

12 DEFENDANT BADOLATO: Yes, your Honor.

13 THE COURT: You should also understand that parole has
14 been abolished in the federal system, and that if you're
15 sentenced to prison, you will not be released early on parole,
16 although there is limited opportunity to earn credit for good
17 behavior.

18 Do you understand?

19 Mr. Kolfage?

20 DEFENDANT KOLFAGE: Yes, your Honor.

21 THE COURT: Mr. Badolato?

22 DEFENDANT BADOLATO: Yes, your Honor.

23 THE COURT: I will now turn to Docket 22 CR 201, which
24 pertains only to Mr. Kolfage.

25 The maximum term of imprisonment for Counts One and

M4LKKOLP

1 Three of the superseding indictment is three years, which could
2 be followed by up to one year of supervised release.

3 The maximum term of imprisonment for Count Two of the
4 superseding indictment, which pertains only to Mr. Kolfage, is
5 20 years, which could be followed by up to three years of
6 supervised release.

7 In addition to these restrictions on your liberty, the
8 maximum punishment for each count also includes certain
9 financial penalties.

10 For wire fraud conspiracy in Count One of the
11 indictment in Docket 20 CR 412, which pertains to both
12 defendants, and wire fraud in Count Two of the superseding
13 indictment in Docket 22 CR 201, which pertains only to
14 Mr. Kolfage, the maximum allowable fine is \$250,000 or twice
15 the gain you received from the crime or twice the loss to any
16 victims, whichever is greater.

17 For filing a false tax return in Counts One and Three
18 of the superseding indictment, in Docket 22 CR 201, which
19 pertains only to Mr. Kolfage, the maximum allowable fine is
20 \$100,000 or twice the gain you received from the crime or twice
21 the loss to any victims, whichever is greater.

22 I'm also required to impose a mandatory special
23 assessment of \$100 on each count of conviction.

24 In addition, I must order restitution to any persons
25 or entities injured as a result of your criminal conduct.

M4LKKOLP

1 The indictment in Docket 20 CR 412, which pertains to
2 both defendants, also includes a forfeiture allegation, which
3 I'm going to read to you now.

4 As a result of committing the offense alleged in Count
5 One of this indictment, you, the defendants, shall forfeit to
6 the United States, pursuant to 18, United States Code,
7 Section 981(a)(1)(C) and 28, United States Code, Section
8 2461(c), any and all property, real and personal, that
9 constitutes or is derived from proceeds traceable to the
10 commission of said offense, including, but not limited to, a
11 sum of money in United States currency representing the amount
12 of proceeds traceable to the commission of said offense.

13 The forfeiture allegation also requires you to forfeit
14 your interest in certain specific property, including numerous
15 bank accounts.

16 Mr. Kolfage, do you understand the maximum penalties
17 for Count One of the indictment in 20 CR 412, and Counts One,
18 Two, and Three of the superseding indictment in Docket 22 CR
19 201?

20 DEFENDANT KOLFAGE: Yes, your Honor.

21 THE COURT: And do you understand that it is possible,
22 taking all the counts together in both dockets, that you could
23 be sent to prison for 46 years?

24 DEFENDANT KOLFAGE: Yes, your Honor.

25 THE COURT: Mr. Badolato, do you understand the

M4LKKOLP

1 maximum penalties for Count One of the indictment in Docket 20
2 CR 412?

3 DEFENDANT BADOLATO: Yes, your Honor.

4 THE COURT: Do you understand that you could be sent
5 to prison for up to 20 years?

6 DEFENDANT BADOLATO: Yes, I do, your Honor.

7 THE COURT: Please understand, I am just telling you
8 about the punishments that are part of the sentence. Being
9 convicted of a felony, even if by a plea of guilty, may have
10 other consequences. If you are a U.S. citizen, you may lose
11 certain valuable civil rights, to the extent that you have them
12 now, as a result of your guilty plea, such as the right to
13 vote, the right to hold public office, the right to serve on a
14 jury, and the right to possess a firearm.

15 If you are not a U.S. citizen, you may be deported
16 from the United States as a result of your guilty plea, and, in
17 certain circumstances, that deportation may be mandatory.

18 In imposing sentence, federal judges are required to
19 consider the recommendations of the federal sentencing
20 guidelines. The guidelines are a complicated set of rules for
21 determining an appropriate sentence. Judges must pay attention
22 to the sentencing guidelines in determining a sentence, but, in
23 the end, the judge is required to give the sentence that she
24 believes best satisfies the purposes of the criminal law, even
25 if that is higher or lower than the guideline recommendation.

M4LKKOLP

1 Have you discussed the sentencing guidelines with your
2 attorney?

3 Mr. Kolfage?

4 DEFENDANT KOLFAGE: Yes, your Honor.

5 THE COURT: Mr. Badolato?

6 DEFENDANT BADOLATO: Yes, your Honor.

7 THE COURT: And you understand that the guidelines are
8 only recommendations to the Court?

9 Mr. Kolfage?

10 DEFENDANT KOLFAGE: Yes, your Honor.

11 THE COURT: Mr. Badolato?

12 DEFENDANT BADOLATO: Yes, your Honor.

13 THE COURT: I understand that there is a written plea
14 agreement that each defendant has signed; is that correct?

15 Mr. Kolfage?

16 DEFENDANT KOLFAGE: Yes, your Honor.

17 THE COURT: Mr. Badolato?

18 DEFENDANT BADOLATO: Yes, your Honor.

19 THE COURT: I have before me the letter plea agreement
20 for Mr. Kolfage, dated March 30, 2022, from Assistant United
21 States Attorneys Alison Moe, Nicolas Roos, and Robert Sobelman
22 to Mr. Kolfage's attorneys, Cesar De Castro and David
23 DeStefano.

24 Mr. Kolfage, did you sign that agreement?

25 DEFENDANT KOLFAGE: Yes, your Honor.

M4LKKOLP

1 THE COURT: I also have before me the letter plea
2 agreement for Mr. Badolato, dated March 30, 2022, from
3 Assistant United States Attorneys Alison Moe, Nicolas Roos, and
4 Robert Sobelman to Mr. Badolato's attorneys, David Stein,
5 Michael Heffernan, and Kelly Kramer.

6 Mr. Badolato, did you sign the agreement?

7 DEFENDANT BADOLATO: Yes, I did, your Honor.

8 THE COURT: Did you read your plea agreement before
9 you signed it?

10 Mr. Kolfage?

11 DEFENDANT KOLFAGE: Yes, your Honor.

12 THE COURT: Mr. Badolato?

13 DEFENDANT BADOLATO: Yes, I did, your Honor.

14 THE COURT: Did you discuss it with your attorney
15 before you signed it?

16 DEFENDANT BADOLATO: Yes, your Honor.

17 THE COURT: Mr. Kolfage?

18 DEFENDANT KOLFAGE: Yes, your Honor.

19 THE COURT: And Mr. Badolato?

20 DEFENDANT BADOLATO: Yes, I did, your Honor.

21 THE COURT: I realize that it is a long document, it
22 contains some technical legal language, but after discussing it
23 with your lawyer, did you understand the terms of the
24 agreement?

25 Mr. Kolfage?

M4LKKOLP

1 DEFENDANT KOLFAGE: Yes, your Honor.

2 THE COURT: Mr. Badolato?

3 DEFENDANT BADOLATO: Yes, I do, your Honor.

4 THE COURT: It appears that both defendants and the
5 government have agreed on the appropriate calculation of their
6 sentences under the guidelines. Is that right?

7 Mr. Kolfage?

8 DEFENDANT KOLFAGE: Yes, your Honor.

9 THE COURT: Mr. Badolato?

10 DEFENDANT BADOLATO: Yes, your Honor.

11 THE COURT: As to Mr. Kolfage, the agreement is that
12 the appropriate guideline sentencing range is 51 to 63 months'
13 imprisonment, with a fine of 20,000 to 200,000 dollars.

14 As to Mr. Badolato, the sentencing range is 41 to 51
15 months' imprisonment, with a fine range of 15,000 to 150,000.

16 That means that pursuant to your agreement, neither of
17 you, nor the government, are allowed to argue to me for a
18 different guideline calculation than the one in your respective
19 agreements, although you may seek a sentence outside that
20 range.

21 Do you understand?

22 Mr. Kolfage?

23 DEFENDANT KOLFAGE: Yes, your Honor.

24 THE COURT: Mr. Badolato?

25 DEFENDANT BADOLATO: Yes, your Honor.

M4LKKOLP

1 THE COURT: You must understand that these agreements
2 do not bind me in any way. I'm required to make my own
3 independent calculation under the sentencing guidelines, and
4 then to impose a sentence based on what I believe is the
5 appropriate sentence for you, even if that sentence is
6 different from the one in this agreement.

7 You understand?

8 Mr. Kolfage?

9 DEFENDANT KOLFAGE: Yes, your Honor.

10 THE COURT: Mr. Badolato?

11 DEFENDANT BADOLATO: Yes, your Honor.

12 THE COURT: I'm not saying that I will come up with
13 any range different from the one that you agreed to with the
14 government, but if I do, then I will not let you withdraw your
15 plea, even if the range I determine is higher than the one you
16 agreed to with the government.

17 Do you understand?

18 Mr. Kolfage?

19 DEFENDANT KOLFAGE: Yes, your Honor.

20 THE COURT: Mr. Badolato?

21 DEFENDANT BADOLATO: Yes, I understand, your Honor.

22 THE COURT: Mr. Kolfage, do you understand that under
23 the agreement, you're giving up your right to appeal or
24 otherwise challenge your sentence so long as I sentence you to
25 63 months of imprisonment or less?

M4LKKOLP

1 DEFENDANT KOLFAGE: Yes, your Honor.

2 THE COURT: You are, similarly, giving up your right
3 to appeal any term of supervised release less than the
4 statutory maximum, any fine equal to or below \$200,000, and any
5 forfeiture or restitution amounts equal to or below
6 \$17,872,106.

7 DEFENDANT KOLFAGE: Yes, your Honor.

8 THE COURT: If I sentence you to more than 63 months'
9 imprisonment for any reason, you have the right to appeal that
10 sentence. So long as I sentence you to 63 months' imprisonment
11 or less, you may not appeal your sentence under the agreement.

12 Do you understand?

13 DEFENDANT KOLFAGE: Yes, your Honor.

14 THE COURT: Mr. Badolato, do you understand that,
15 under the agreement, you're giving up your right to appeal or
16 otherwise challenge your sentence so long as I sentence you to
17 51 months of imprisonment or less?

18 DEFENDANT BADOLATO: Yes, I understand, your Honor.

19 THE COURT: Similarly, you're giving up your right to
20 appeal any term of supervised release less than the statutory
21 maximum, any fine equal to or below \$150,000, and any
22 forfeiture or restitution amounts equal to or below \$1,414,368.

23 DEFENDANT BADOLATO: Yes, I understand, your Honor.

24 THE COURT: If I sentence you to more than 51 months'
25 imprisonment for any reason, you have the right to appeal that

M4LKKOLP

1 sentence, but so long as I sentence you to 51 months of
2 imprisonment or less, you may not appeal your sentence under
3 the agreement.

4 You understand?

5 DEFENDANT BADOLATO: Yes, I do, your Honor.

6 THE COURT: Do you understand that, under your
7 respective agreements, that you're giving up the right to
8 withdraw your plea or challenge your conviction on a few
9 specific grounds, which I am about to describe?

10 First, under the agreement, you're giving up your
11 right to withdraw your plea or challenge your conviction on the
12 grounds that the government has failed to produce the following
13 categories of material as of the date of the signing of the
14 agreement, any material that it was required to produce during
15 discovery, statements of any government witness relating to the
16 subject matter about which the witness would be expected to
17 testify, material that could be used to impeach or attack the
18 testimony of any government witness, material favorable to you
19 that could cast doubt on your guilt, reduce your sentence,
20 other than information establishing your factual innocence.

21 Do you understand?

22 Mr. Kolfage?

23 DEFENDANT KOLFAGE: Yes, your Honor.

24 THE COURT: Mr. Badolato?

25 DEFENDANT BADOLATO: Yes, your Honor.

M4LKKOLP

1 THE COURT: Second, under the agreement, you're also
2 giving up the right to withdraw your guilty plea and the right
3 to challenge your conviction or sentence based on any actual or
4 perceived adverse immigration consequences, including
5 deportation, resulting from the guilty plea and conviction.

6 So, for example, if you are deported following your
7 guilty plea and conviction, or if the government later turns
8 over material that would tend to cast doubt on your guilt other
9 than material that establishes your innocence, you will not be
10 able to withdraw your plea or challenge your conviction on
11 those grounds.

12 Do you understand?

13 Mr. Kolfage?

14 DEFENDANT KOLFAGE: Yes, your Honor.

15 THE COURT: Mr. Badolato?

16 DEFENDANT BADOLATO: Yes, your Honor.

17 THE COURT: I also have a proposed consent order of
18 forfeiture for each defendant attached as Exhibit A to the
19 respective plea agreements.

20 I am going to mark Mr. Kolfage's plea agreement and
21 consent order as Court Exhibit No. 1 and Mr. Badolato's plea
22 agreement and consent order as Court Exhibit No. 2.

23 Did you sign the consent order of forfeiture?

24 Mr. Kolfage?

25 DEFENDANT KOLFAGE: Yes, your Honor.

M4LKKOLP

1 THE COURT: Mr. Badolato?

2 DEFENDANT BADOLATO: Yes, your Honor.

3 THE COURT: Did you read and discuss it with your
4 attorneys?

5 Mr. Kolfage?

6 DEFENDANT KOLFAGE: Yes, your Honor.

7 THE COURT: Mr. Badolato?

8 DEFENDANT BADOLATO: Yes, your Honor.

9 THE COURT: Mr. Kolfage, do you understand that
10 pursuant to the consent order, you are consenting to the entry
11 of a money judgment in the amount of \$17,872,106 in United
12 States currency, representing the amount of proceeds traceable
13 to the offense charged in Count One of the indictment in Docket
14 20 CR 412 that you personally obtained?

15 DEFENDANT KOLFAGE: Yes, your Honor.

16 THE COURT: Mr. Badolato, do you understand that
17 pursuant to the consent order, you are consenting to the entry
18 of a money judgment in the amount of \$1,414,368 in United
19 States currency, representing the amount of proceeds traceable
20 to the offense charged in Count One of the indictment in Docket
21 20 CR 412 that you personally obtained?

22 DEFENDANT BADOLATO: Yes, I understand, your Honor.

23 THE COURT: And you consent to the forfeiture order?

24 DEFENDANT BADOLATO: Yes, I do, your Honor.

25 THE COURT: Did you willingly sign the plea agreement?

M4LKKOLP

1 Mr. Kolfage?

2 DEFENDANT KOLFAGE: Yes, your Honor.

3 THE COURT: Mr. Badolato?

4 DEFENDANT BADOLATO: Yes, your Honor.

5 THE COURT: Did anybody force you or bribe you to sign
6 the agreement?

7 Mr. Kolfage?

8 DEFENDANT KOLFAGE: No, your Honor.

9 THE COURT: Mr. Badolato?

10 DEFENDANT BADOLATO: No, your Honor.

11 THE COURT: Does the written plea agreement constitute
12 your complete and total understanding of the agreement between
13 you and the government?

14 Mr. Kolfage?

15 DEFENDANT KOLFAGE: Yes, your Honor.

16 THE COURT: Mr. Badolato?

17 DEFENDANT BADOLATO: Yes, your Honor.

18 THE COURT: And do you understand that if your
19 attorney or anyone else has attempted to predict what your
20 sentence will be, that their prediction could be wrong?

21 Mr. Kolfage?

22 DEFENDANT KOLFAGE: Yes, your Honor.

23 THE COURT: Mr. Badolato?

24 DEFENDANT BADOLATO: Yes, your Honor.

25 THE COURT: I'm asking you this because no one – not

M4LKKOLP

1 your attorney or the prosecutor, not even I – can be sure now
2 what your sentence will be because that sentence cannot be
3 determined until I've received the presentence report and until
4 I have decided what is the correct calculation of the range
5 recommended by the sentencing guidelines and whether there is
6 any basis for not following the guideline.

7 Even if your sentence is different from what your
8 attorney or anyone else has predicted, even if it's different
9 from what you hope for or expect, once you've pleaded guilty,
10 you will not be allowed to withdraw your plea.

11 Do you understand?

12 Mr. Kolfage?

13 DEFENDANT KOLFAGE: Yes, your Honor.

14 THE COURT: Mr. Badolato?

15 DEFENDANT BADOLATO: Yes, I understand, your Honor.

16 THE COURT: Other than what is contained in the plea
17 agreement, has anyone made any promise or offered you any
18 inducement to get you to plead guilty?

19 Mr. Kolfage?

20 DEFENDANT KOLFAGE: No, your Honor.

21 THE COURT: Mr. Badolato?

22 DEFENDANT BADOLATO: No, your Honor.

23 THE COURT: Has anyone threatened, bribed, or forced
24 you to plead guilty?

25 Mr. Kolfage?

M4LKKOLP

1 DEFENDANT KOLFAGE: No, your Honor.

2 THE COURT: Mr. Badolato?

3 DEFENDANT BADOLATO: No, your Honor.

4 THE COURT: Has anyone made a promise to you as to
5 what your sentence will be?

6 Mr. Kolfage?

7 DEFENDANT KOLFAGE: No, your Honor.

8 THE COURT: Mr. Badolato?

9 DEFENDANT BADOLATO: No, your Honor.

10 THE COURT: Mr. Kolfage, now that you've been advised
11 of the charges against you, the possible penalties you face,
12 and the rights that you're giving up, is it still your
13 intention to plead guilty to Count One of the indictment in
14 Docket 20 CR 412, conspiracy to commit wire fraud, and Counts
15 One, Two, and Three of the superseding indictment in Docket 22
16 CR 201, making false statements on a tax return and wire fraud?

17 DEFENDANT KOLFAGE: Yes, your Honor.

18 THE COURT: So, with respect to Count One of the
19 indictment in Docket 20 CR 412, how do you plead?

20 DEFENDANT KOLFAGE: Guilty, your Honor.

21 THE COURT: With respect to Counts One, Two, and Three
22 of the superseding indictment in Docket 22 CR 201, how do you
23 plead?

24 DEFENDANT KOLFAGE: Guilty.

25 THE COURT: Now, tell me, in your own words, what you

M4LKKOLP

1 did that makes you believe that you are guilty of the charges
2 in the indictments.

3 MR. DE CASTRO: Your Honor, this is Cesar de Castro.
4 As I think the Court is aware, Mr. Kolfage and I and
5 Mr. DeStefano worked on a statement from which he's going to
6 read.

7 THE COURT: That's fine.

8 DEFENDANT KOLFAGE: Okay.

9 With respect to Count One of the Southern District of
10 New York indictment, in December of 2018, I created a
11 fundraising campaign on Go Fund Me called "We, the People,
12 Build a Wall." When I launched the campaign, my sole intent
13 was to raise funds and to donate all of those funds to the
14 federal government to be used exclusively to build a wall at
15 the southern border of the United States.

16 I represented in the Go Fund Me campaign that all
17 monies would go to building the wall. Within a week, the
18 campaign had received approximately 17 million in donations.
19 Its early success drew an interest of prominent, political, and
20 businesspeople. However, it soon became apparent that we would
21 not be able to make the donation to the government as intended
22 earmarked exclusively for a southern border wall. The entire
23 campaign leadership team, along with counsel and Go Fund Me,
24 accomplished a shift from the original purpose of a passthrough
25 for donations to a Section 501(c)(4) organization, called "We

M4LKKOLP

1 Build the Wall, Inc.," that would undertake, among other
2 things, to construct the wall privately.

3 Together with such people, I continued to raise funds
4 and promised that I will take no salary and will not take a
5 penny of compensation from their donations. In doing so, we
6 induced initial donors to opt into the project to be -- to opt
7 into the new project, in part, through the misrepresentation
8 that I would not profit from We Build the Wall, Inc., or take
9 salary or compensation.

10 With the vast majority of donors opting in, We Build
11 the Wall, Inc., did, in fact, construct a southern border wall
12 in the southern part of New Mexico. Despite our promises
13 together with others, I knowingly and willfully conspired to
14 unlawfully receive money from the donations. As part of the
15 campaign, I used the internet and telephones to solicit
16 donations. I understand donations were received from within
17 the Southern District of New York. I knew what I was doing was
18 wrong and a crime.

19 With respect to the Florida superseding indictment, in
20 2020, in the Northern District of Florida, I knowingly
21 prepared, signed, and filed my 2019 personal income tax return,
22 and later an amended 2019 tax return, under penalty of perjury
23 that materially underreported my income, including money that I
24 had received from the donations. I filed the returns
25 electronically. I knew what I was doing was wrong and a crime.

M4LKKOLP

1 THE COURT: Mr. Kolfage, you asked the public to
2 donate money to build the wall; is that right?

3 DEFENDANT KOLFAGE: Yes, your Honor.

4 THE COURT: And you promised the public that
5 100 percent of the money would be used for building the wall;
6 is that right?

7 DEFENDANT KOLFAGE: That's correct.

8 THE COURT: Despite your promise, you made an
9 agreement with others to keep a large sum of money for
10 yourself; is that right?

11 DEFENDANT KOLFAGE: That is correct.

12 THE COURT: Then, after keeping that large sum of
13 money for yourself, you did not tell the IRS that you received
14 the money; is that right?

15 DEFENDANT KOLFAGE: That is correct.

16 THE COURT: And you did that to avoid paying taxes; is
17 that right?

18 DEFENDANT KOLFAGE: That is correct.

19 THE COURT: When you did these things, you knew that
20 what you were doing was wrong and illegal?

21 DEFENDANT KOLFAGE: That is correct.

22 THE COURT: Mr. Roos, are there any additional
23 questions that you would like me to pose to Mr. Kolfage?

24 MR. ROOS: No, your Honor.

25 THE COURT: Mr. Roos, would you summarize what the

M4LKKOLP

1 government's evidence would be if Mr. Kolfage were to go to
2 trial?

3 MR. ROOS: Certainly.

4 So, the government's proof would include bank records
5 and other financial transfer records related to both the
6 donations and the transfer of funds, directly or indirectly, to
7 Mr. Kolfage's bank accounts. The government's proof at trial
8 would include the public representations in the form of social
9 media posts, news articles, and other statements on television.
10 The government's evidence would include emails and text
11 messages obtained pursuant to search warrants executed on both
12 email and iCloud accounts, and also on cell phones and other
13 electronic devices. And, finally, the government's proof would
14 also include statements of witnesses, including donors.

15 THE COURT: Do both Mr. De Castro and the government
16 agree that there is a sufficient factual predicate for a guilty
17 plea?

18 MR. DE CASTRO: I do, your Honor. This is
19 Mr. De Castro.

20 MR. ROOS: Your Honor, there is just one matter on
21 this plea that I want to raise, which is that on April 11th,
22 2022, Mr. Kolfage was quoted in an article stating that --
23 stating -- this is, I think, the text of the article -- they
24 Michael Flynned me. I don't completely understand what that
25 means, but given that I think Mr. Flynn's reported accusation

M4LKKOLP

1 was that there was a conflict of interest, I just want to be
2 sure that it's clear that he's pleading guilty and voluntarily
3 and not for some other reason.

4 THE COURT: Well, I have asked him those questions.

5 Having heard what Mr. Roos just said, Mr. Kolfage, are
6 you pleading guilty voluntarily?

7 DEFENDANT KOLFAGE: Yes, your Honor.

8 THE COURT: And knowingly?

9 DEFENDANT KOLFAGE: Yes, your Honor.

10 THE COURT: And you're pleading guilty because you're
11 guilty?

12 DEFENDANT KOLFAGE: Yes, your Honor.

13 THE COURT: So, Mr. Roos, you have not answered my
14 question with regard to whether there's a sufficient factual
15 predicate.

16 MR. ROOS: Yes, your Honor. Thank you for asking
17 those follow-up questions, and I agree that there is more than
18 sufficient factual predicate for these pleas.

19 THE COURT: Mr. De Castro, do you know of any valid
20 defense that would prevail at trial?

21 MR. DE CASTRO: No, your Honor.

22 THE COURT: Do Mr. De Castro or the government know of
23 any reason that I should not accept Mr. Kolfage's plea of
24 guilty?

25 MR. DE CASTRO: No reason, Judge.

M4LKKOLP

1 MR. ROOS: No, your Honor.

2 THE COURT: All right. Mr. Kolfage, because you
3 acknowledge that you are, in fact, guilty as charged in the
4 indictment in Docket 20 CR 412, and the superseding indictment
5 in Docket 22 CR 201, because I'm satisfied that you know of
6 your rights, including your right to go to trial, and that
7 you're aware of the consequences of your plea, including the
8 sentence which may be imposed, because I find that you're
9 knowingly and voluntarily pleading guilty, I accept your guilty
10 plea and enter a judgment of guilty on Count One of the
11 indictment in Docket 20 CR 412 and Counts One, Two, and Three
12 of the superseding indictment in Docket 22 CR 201.

13 Mr. Badolato, now that you've been advised of the
14 charges against you, the possible penalties you face, and the
15 rights that you're giving up, is it still your intention to
16 plead guilty to Count One of the indictment in Docket 20 CR
17 412, conspiracy to commit wire fraud?

18 DEFENDANT BADOLATO: Yes, I do, your Honor.

19 THE COURT: So, with respect to Count One of the
20 indictment in Docket 20 CR 412, how do you plead?

21 DEFENDANT BADOLATO: Guilty.

22 THE COURT: Now, tell me, in your own words, what you
23 did that makes you believe that you're guilty of the charge in
24 the indictment.

25 DEFENDANT BADOLATO: Yes, your Honor.

M4LKKOLP

1 From December -- approximately December 2018 to
2 August 2020, I worked with the organization We Build the Wall.
3 We Build the Wall solicited donations from the public to build
4 a wall on private land along the southern border of the United
5 States. To raise funds for We Build the Wall, the organization
6 issued statements assuring prospective donors that 100 percent
7 of the money they collected would be used exclusively to
8 support the stated mission and purpose of the organization.

9 I, together with others, mutually decided to falsely
10 claim that Mr. Kolfage, president of We Build the Wall, would
11 not receive any compensation from We Build the Wall funds. We
12 communicated this to the public via the internet, the media,
13 and various public speeches. The purpose of these false
14 representations that we made was to bolster the reputation of
15 We Build the Wall and, in turn, generate more donations, which
16 was received by electronic transfer and mail.

17 I knew the statements indicating that Brian was not
18 being compensated was false. I was also aware that always it
19 was the organization's intention to compensate Mr. Kolfage
20 despite the representations we made to the contrary.

21 I knew this was wrong, and I'm terribly, terribly
22 sorry for what I did, and I humbly respectfully beg the Court
23 for mercy.

24 THE COURT: So you were aware that the public was told
25 that the funds were to be used to build the wall?

M4LKKOLP

1 DEFENDANT BADOLATO: Yes.

2 THE COURT: But you knew that Mr. Kolfage was going to
3 get money from the We Build the Wall donations?

4 DEFENDANT BADOLATO: Yes, I did, and I helped
5 facilitate it.

6 THE COURT: But you're not saying that you knew that
7 you were also going to get money from these funds?

8 DEFENDANT BADOLATO: Yes, I did know.

9 THE COURT: Are you saying that you knew that you
10 would be getting money from these funds?

11 DEFENDANT BADOLATO: I was paid by We Build the Wall.

12 THE COURT: That's not my question.

13 You understood that the public was told that the funds
14 were to be used 100 percent to build the wall; isn't that so?

15 DEFENDANT BADOLATO: Yes.

16 THE COURT: But despite that, you knew that you were
17 going to get a portion of the money; isn't that true?

18 DEFENDANT BADOLATO: Yes.

19 THE COURT: When you did this, did you know that what
20 you were doing was wrong and illegal?

21 DEFENDANT BADOLATO: Yes.

22 THE COURT: Mr. Roos, are there any additional
23 questions that you would like me to pose to Mr. Badolato?

24 MR. ROOS: Just on the question of venue, your Honor,
25 I don't think Mr. Badolato's allocution said something about

M4LKKOLP

1 the Southern District of New York. I can proffer, and I think
2 Mr. Badolato would agree, that there are donors in the Southern
3 District of New York or else he could waive venue.

4 THE COURT: You were aware that there were donors in
5 the Southern District of New York, Mr. Badolato?

6 DEFENDANT BADOLATO: Yes, I was aware, your Honor.

7 THE COURT: Mr. Roos, would you summarize what the
8 government's evidence would be if Mr. Badolato were to go to
9 trial?

10 MR. ROOS: Yes, your Honor.

11 It would be substantially the same evidence as I
12 described for Mr. Kolfage, which I'll just note again briefly.

13 So, financial transaction records, both showing
14 donations to We Build the Wall and the movement of funds out of
15 We Build the Wall, including to the defendant's bank accounts,
16 call records, emails, and text messages, like the ones I
17 described previously that were obtained pursuant to search
18 warrants on email, iCloud, and electronic device accounts,
19 public statements of -- Mr. Badolato did not make public
20 statements himself, I don't believe, so the public statements
21 of his alleged coconspirators, and then, again, witness
22 testimony, including testimony of donors.

23 THE COURT: Mr. Heffernan and Mr. Roos, do you both
24 agree that there is a sufficient factual predicate for a guilty
25 plea?

M4LKKOLP

1 MR. ROOS: Yes, your Honor.

2 THE COURT: Mr. Heffernan?

3 MR. HEFFERNAN: Yes, your Honor.

4 THE COURT: Mr. Heffernan, do you know of any valid
5 defense that would prevail at trial?

6 MR. HEFFERNAN: No, your Honor.

7 THE COURT: Is there any reason that I should not
8 accept Mr. Badolato's plea of guilty?

9 Mr. Heffernan?

10 MR. HEFFERNAN: No, your Honor.

11 THE COURT: Mr. Roos?

12 MR. ROOS: No, your Honor.

13 THE COURT: All right. Mr. Badolato, because you
14 acknowledge that you are, in fact, guilty as charged in the
15 indictment in Docket 20 CR 412, because I'm satisfied that you
16 know of your rights, including your right to go to trial, and
17 that you're aware of the consequences of your plea, including
18 the sentence which may be imposed, and because I find that
19 you're knowingly and voluntarily pleading guilty, I accept your
20 guilty plea and enter a judgment of guilty on Count One of the
21 indictment in Docket 20 CR 412.

22 The probation department will want to interview both
23 of you in connection with a presentence report that it will
24 prepare.

25 Does defense counsel wish to be present for any

M4LKKOLP

1 interview in connection with the report?

2 Mr. De Castro?

3 MR. DE CASTRO: Yes, your Honor.

4 THE COURT: And Mr. Heffernan?

5 MR. HEFFERNAN: Yes, your Honor.

6 THE COURT: All right. So I direct that there shall
7 not be an interview of either defendant unless counsel is
8 present.

9 Mr. Kolfage and Mr. Badolato, if you choose to speak
10 to the probation department, make sure that anything that you
11 say is accurate and complete. I will read the reports
12 carefully. They are important to me in deciding what sentence
13 to impose. You and your attorney have the right to examine the
14 report and to comment on it at the time of sentencing. I urge
15 that you both read the reports and discuss them with your
16 attorneys. If there are any mistakes, point them out to your
17 lawyers so that they can bring them up with me.

18 Sentencing for both defendants is set for
19 September 6th, 2022, at 1:00 p.m., in New York City.

20 The government shall provide the probation officer
21 with its factual statement within seven days. Defense counsel
22 must arrange for the defendants to be interviewed by the
23 probation department within the next two weeks.

24 Defendants' submissions are due two weeks prior to
25 sentencing, and the government's submissions are due one week

M4LKKOLP

1 prior to sentencing.

2 I understand that both defendants are currently out on
3 bail.

4 Is there any objection to continuing the present bail
5 conditions?

6 MR. ROOS: No, your Honor.

7 THE COURT: I find, by clear and convincing evidence,
8 that Mr. Kolfage and Mr. Badolato are not likely to flee or
9 pose a danger to the safety of any other person or the
10 community if bail is continued.

11 Mr. Kolfage and Mr. Badolato, all the conditions on
12 which you were released still apply. Violation of those
13 conditions can have serious consequences, including revocation
14 of bail and prosecution for bail-jumping.

15 Do you understand?

16 Mr. Kolfage?

17 DEFENDANT KOLFAGE: Yes, your Honor.

18 THE COURT: Mr. Badolato?

19 DEFENDANT BADOLATO: Yes, your Honor.

20 THE COURT: In particular, you must be personally
21 present in court for sentencing at the time and date set or you
22 will be guilty of a separate crime, the crime of bail-jumping,
23 and subject to an additional fine or prison sentence in
24 addition to whatever sentence you may receive for the crime to
25 which you have just pleaded guilty.

M4LKKOLP

1 Do you understand?

2 Mr. Kolfage?

3 DEFENDANT KOLFAGE: Yes, your Honor.

4 THE COURT: Mr. Badolato?

5 DEFENDANT BADOLATO: Yes, your Honor.

6 THE COURT: Are there any further applications?

7 MR. DE CASTRO: Not from the defense, your Honor.

8 MR. ROOS: Not from the government, your Honor.

9 MR. HEFFERNAN: Not for Mr. Badolato's defense, your
10 Honor.

11 THE COURT: All right.

12 That brings our hearing to a close. I wish all of you
13 good health. Thank you.

14 DEFENDANT KOLFAGE: Thank you.

15 * * *

16

17

18

19

20

21

22

23

24

25